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Planning Commission Staff Report

TO: PLANNING COMMISSION

FROM: CATHERINE LORBEER, AICP, ZONING ADMINISTRATOR

(480) 503-6016, CATHERINE.LORBEER@GILBERTAZ.GOV

THROUGH: LINDA EDWARDS, AICP, PLANNING MANAGER

(480) 503-6750, LINDA.EDWARDS@GILBERTAZ.GOV

MEETING DATE: JUNE 4, 2014

SUBJECT: UP13-07; REQUEST TO REVOKE A CONDITIONAL USE PERMIT

FOR EAST VALLEY PATIENT WELLNESS CENTER PERMITTING A MEDICAL MARIJUANA DISPENSARY IN THE LIGHT INDUSTRIAL (LI) ZONING DISTRICT, ON APPROXIMATELY 0.8 ACRES OF REAL PROPERTY LOCATED AT 988 S. 182ND PLACE, DUE TO FAILURE

TO COMPLY WITH CONDITIONS OF THE USE PERMIT.

STRATEGIC INITIATIVE: N/A

RECOMMENDED MOTION

Make the Findings of Fact and Revoke UP13-07: Request to revoke a Conditional Use Permit for East Valley Patient Wellness Center permitting a Medical Marijuana Dispensary in the Light Industrial (LI) Zoning District, on approximately 0.8 acres of real property located at 988 S. 182nd Place.

APPLICANT/OWNER

Original Application

Duke Rodriguez

Cumbree Investments

160 W. Brooks

17015 N. Scottsdale Rd., #125

Scottsdale, AZ 85255

Gilbert, AZ 85233

(480) 235-4550

(480) 246-5700 poolexcavation@yahoo.com

Duke@SoldbyDuke.com

Current Information

Duke Rodriguez Gilbert Property Management LLC 16624 N. 90th Street #200 988 S. 182nd Place

Scottsdale, AZ 85260 988 S. 182 Place Gilbert, AZ 85296

(480) 404-6699 Duke@UltraHealth.com

BACKGROUND/DISCUSSION

History

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Date April 1, 2008	Action Town Council adopted Resolution No. 2140 and approved A07-87 to
April 1, 2000	annex an approximate 2.95 acre area including this site.
June 10, 2008	Town Council approved Z06-128, rezoning the 2.95 acre County Island to LI-Light Industrial conventional zoning district.
July 28, 2011	Town Council approved case Z11-05, the Medical Marijuana amendments to the LDC allowing dispensaries as a conditional use in Light Industrial and General Industrial zoning districts.
June 5, 2013	Planning Commission discussed case UP13-07 East Valley Patient Wellness Center dispensary at Study Session.
June 13, 2013	Case DR13-10 East Valley Patient Wellness Center dispensary was discussed at Design Review Board Study Session for site plan, building, landscaping, etc.
July 3, 2013	Planning Commission approved (6-0 vote) case UP13-07 East Valley Patient Wellness Center dispensary, subject to conditions.
July 11, 2013	Design Review Board approved (6-0 vote) case DR13-10, subject to conditions.

Overview

According to Section 5.404 of the Land Development Code (LDC), a use permit revocation may be initiated by the Zoning Administrator and revoked by the Planning Commission following a public hearing because of failure to comply with the conditions of the use permit.

In April of 2014, the Town began an investigation into whether the subject property was in compliance with the conditions outlined in Conditional Use Permit UP13-07, which authorizes the operation of a medical marijuana dispensary at 988 S. 182nd Place, Gilbert, Arizona 85296. Specifically, LDC Section 4.5014 and the conditions of approval state that "this Use Permit shall only become effective upon the Dispensary providing proof that the Dispensary is State-approved, certified and registered with the Arizona Department of Health Services pursuant to Arizona Revised Statues, Title 36, Chapter 28.1." See Attachment 1 for the Notice of Decision.

The Zoning Administrator has received information that the Applicant, Duke Rodriguez, is not the holder of the certificate for Community Health Analysis Area (CHAA) 77, and that Mr. Rodriguez and/or the property owner is not authorized to use the certificate issued to East Valley Patient Wellness Group. See Attachment 2 for related correspondence.

PUBLIC NOTIFICATION AND INPUT

A notice of public hearing was published in a newspaper of general circulation in the Town, and an official notice was posted in all the required public places within the Town.

Notice of the revocation hearing was given by first class mail as follows:

- (1) To the property owner of record;
- (2) To the property address; and
- (3) To the business address.

Staff has received no comments from the applicant or the public.

PROPOSITION 207

An agreement to "Waive Claims for Diminution in Value" Pursuant to A.R.S. § 12-1134 was signed on March 29, 2013 by the landowners of the subject site, in conformance with Section 5.201 of the Town of Gilbert Land Development Code. This waiver is located in the case file.

FINDINGS

Staff provides the following finding of fact to substantiate revocation of UP13-07, a Conditional Use Permit for East Valley Patient Wellness Center permitting a Medical Marijuana Dispensary:

1. The project has violated one or more of the terms of conditions of the use permit; specifically, Condition No. 3, which states, "The Medical Marijuana Dispensary Use and the subject site shall comply with all Town of Gilbert codes as well as all requirements

- identified under Article 4.5014 of the Land Development Code or as amended prior to Certificate of Occupancy for the Medical Marijuana Dispensary."
- 2. The project has violated one or more of the terms of conditions of the use permit; specifically, Condition No. 4, which states, "This Use Permit shall only become effective upon the Dispensary providing proof that the Dispensary is State-approved, certified and registered with the Arizona Department of Health Services pursuant to Arizona Revised Statutes, Title 36, and Chapter 28.1".

STAFF RECOMMENDATION

Make the Findings of Fact and Revoke UP13-07: A Conditional Use Permit for East Valley Patient Wellness Center permitting a Medical Marijuana Dispensary in the Light Industrial (LI) Zoning District, on approximately 0.8 acres of real property located at 988 S. 182nd Place.

Respectfully submitted,

Catherine Lorbeer, AICP

Principal Planner/ Zoning Administrator

Attachments and Enclosures:

Cathuni Lorber

- 1. Findings of Fact
- 2. Previous Notice of Decision
- 3. Correspondence to Duke Rodriguez

Revoke UP13-07 Attachment 1: Findings of Fact June 4, 2014

FINDINGS OF FACT

Revocation of UP13-07 East Valley Patient Wellness Group

Staff provides the following finding of fact to substantiate revocation of UP13-07, a Conditional Use Permit for East Valley Patient Wellness Center permitting a Medical Marijuana Dispensary:

- 1. The project has violated one or more of the terms of conditions of the use permit; specifically, Condition No. 3, which states, "The Medical Marijuana Dispensary Use and the subject site shall comply with all Town of Gilbert codes as well as all requirements identified under Article 4.5014 of the Land Development Code or as amended prior to Certificate of Occupancy for the Medical Marijuana Dispensary."
- 2. The project has violated one or more of the terms of conditions of the use permit; specifically, Condition No. 4, which states, "This Use Permit shall only become effective upon the Dispensary providing proof that the Dispensary is State-approved, certified and registered with the Arizona Department of Health Services pursuant to Arizona Revised Statutes, Title 36, and Chapter 28.1".

Revoke UP13-07 Attachment 2: Previous Notice of Decision June 4, 2014



Duke Rodriguez Cumbree Investments 17015 N. Scottsdale Road Scottsdale, AZ 85255

Subject: Use Permit 13-07

Dear Mr. Rodriguez:

On July 3, 2013, the Gilbert Planning Commission approved the above-referenced case UP13-07, East Valley Patient Wellness Center; Conditional Use Permit to allow a Medical Marijuana Dispensary in the Light Industrial (LI) zoning district, on 0.80 acres, located south and west of the southwest corner of Power Road and Warner Road, subject to the following conditions:

- 1. The Medical Marijuana Dispensary shall be in substantial conformance with Attachment #4 Site Plan, Attachment #5 Floor Plan, Attachment #6 General Regulations and Attachment #7 Security Plan, as approved by the Planning Commission at the July 3, 2013 Public Hearing.
- 2. Any later phase of development to modify, enlarge or expand the dispensary, shall require submittal of subsequent Use Permit application for review and approval by Planning Commission at a Public Hearing.
- 3. The Medical Marijuana Dispensary Use and the subject site shall comply with all Town of Gilbert codes as well as all requirements identified under Article 4.5014 of the Land Development Code or as amended prior to Certificate of Occupancy for the Medical Marijuana Dispensary.
- 4. This Use Permit shall only become effective upon the Dispensary providing proof that the Dispensary is State-approved, certified and registered with the Arizona Department of Health Services pursuant to Arizona Revised Statutes, Title 36, and Chapter 28.1.

This Use Permit is subject to all limitations, including termination provisions set forth in the Gilbert Land Development Code and in this Notice of Decision.

Please ensure public notice hearing signs are removed within one week of receiving this Use Permit.

If you have any questions regarding this Notice of Decision, please contact Al Ward (480) 503-6748 or by email at al.ward@gilbertaz.gov.

Thank You.

cc: Findings of Fact
Planning Commission Minutes of 7.3.13



May 15, 2014

Duke Rodriguez Cumbree Investments 17015 N. Scottsdale Road, Suite 125 Scottsdale, AZ 85255

Duke Rodriguez 16624 N. 90th Street, #200 Scottsdale, AZ 85260

Subject: Revocation Proceedings for Use Permit 13-07

Dear Mr. Rodriguez:

On April 10, 2014, you met with Town of Gilbert staff in response to the Town's investigation into whether your property is in compliance with the conditions outlined in Conditional Use Permit UP13-07, which authorizes the operation of a medical marijuana dispensary at 988 S. 182nd Place, Gilbert, Arizona 85296. Staff asked that you supply proof that the medical marijuana dispensary planned for your property "is State-approved, certified and registered with the Arizona Department of Health Services (ADHS)," as required by UP13-07 and the Town's Land Development Code (LDC). At that time, you provided staff with a Medical Marijuana Dispensary Registration Certificate bearing the name "East Valley Patient Wellness Group – DBA: Ultra Health-Gilbert." This was the first time Town staff had seen this version of the certificate and, in light of that information, staff elected to defer plans to initiate revocation proceedings pending further investigation.

On April 29, 2014, following communication between the Town and Arizona Department of Health Services (ADHS), the Town received the enclosed letter dated April 25, 2014. The letter, addressed to Kathy Sanchez of East Valley Patient Wellness Group, LLC, confirms that the registration certificate for Community Health Analysis Area (CHAA) 77 was issued to her organization. It further confirms that ADHS does not recognize "Cumbre Investments, LLC, Ultra Health, LLC, or any other entity" as the holder of the certificate for CHAA 77. Additionally, ADHS included a copy of the registration certificate, appearing as it did as of April 25, 2014, with its letter. The enclosed certificate does not match the certificate you provided on April 10, 2014.

Given this new information, the Town has elected to proceed with revocation proceedings for UP13-07. The April 25, 2014 letter and its enclosure have been included with a packet of information that provides you with official notice of the revocation hearing pursuant to LDC § 5.404(C)(2).

If you have any questions regarding the above, you may contact Jack Vincent, Assistant Town Attorney, at (480) 503-6107.

Sincerely,

Catherine Lorbeer, AICP

Principal Planner/Zoning Administrator

albumilorben

cc: Jack Vincent, Assistant Town Attorney

Linda Edwards, Planning Manager



Division for Planning and Operations Administrative Counsel and Rules

1740 W Adams, Suite 203 Phoenix, Arizona 85007-2670 (602) 542-1020 (602) 364-1150 FAX JANICE K BREWER, GOVERNOR WILL HUMBLE, DIRECTOR

April 25, 2014

Kathy Sanchez, Principal Officer East Valley Patient Wellness Group, LLC 2112 E. Catamaran Drive Gilbert, Arizona 85304

Re:

Medical Marijuana Program

Dear Ms. Sanchez:

Pursuant to your request as the Principal Officer for East Valley Patient Wellness Group, LLC, to clarify ownership and authority to operate a medical marijuana dispensary, the Arizona Department of Health Services (ADHS) confirms that a dispensary registration certificate (DRC) was issued to East Valley Patient Wellness Group, LLC. Further, ADHS recognizes East Valley Patient Wellness Group, LLC, as the current and sole holder of the DRC for Community Health Analysis Area (CHAA) 77

ADHS can confirm that it does not recognize Cumbre Investments, LLC, Ultra Health, LLC, or any other entity as a holder of the DRC for CHAA 77 A copy of the DRC, as of the date of this letter, is enclosed

Sincerely,

Jeff Bloomberg, Manager

Division for Planning and Operations, Administrative Counsel and Rules

JB:rl

cc: Richard Keyt Juli Boles



East Valley Patient Wellness Group

988 S. 182nd Place, Gilbert, Arizona 85296

The dispensary applicant listed above has been issued a Medical Marijuana Dispensary Registration Certificate. This Registration Certificate is not an approval to operate. The holder is authorized to apply for an Approval to Operate in the State of Arizona. An application for Approval to Operate must be submitted, along with items described in A.A.C R9-17-305, no later than 60 days prior to the Registration Certificate expiring. This certificate has been issued under the authority of Title 36, Chapter 28.1, Arizona Revised Statutes and pursuant to Title 9, Chapter 17, Article 3, Department of Health Services' rules and regulations.

THIS CERTIFICATE IS NOT TRANSFERABLE

Registration Certificate Identification Number: 0000063DCTB00283389

Issue Date: August 7, 2012

Expiration Date: August 7, 2014

Department of Health Services, and possible arrest, prosecution, imprisonment, and fines for violation of state drug laws. The State of Arizona, including but not limited to the employees of the Arizona Department State Medical Marijuana Act ("Act"), A.R.S Title 36, Chapter 28.1 and A.A.C. Title 9, Chapter 17. Any failure to comply with the Act may result in revocation of the Registration Certificate issued by the Arizona of Health Services, is not facilitating or participating in any way with my acquisition, possession, cultivation, manufacturing, delivery, transfer, transportation, supplying, selling, distributing, or dispensing medical cultivation, manufacturing, delivery, transfer, transportation, supplying, selling, distributing, or dispensing medical marijuana under state law is lawful only if done in strict compliance with the requirements of the A Registration Certificate issued by the Arizona Department of Health Services pursuant to A.R.S. Title 36, Chapter 28.1 and A.C.C. Title 9, Chapter 17 does not protect the holder from legal action by local, city, state, or federal authorities, including possible criminal prosecution for violations of federal law for the sale, manufacture, distribution, use, dispensing, possession, etc. of marijuana. The acquisition, possession,

THE ARIZONA MEDICAL MARIJUANA ACT DOES NOT AUTHORIZE THE HOLDER OF A DISPENSARY REGISTRATION CERTIFICATE TO CULTIVATE, POSSESS, OR SELL MEDICAL MARIJUANA PRIOR TO RECEIVING APPROVAL TO OPERATE FROM THE DEPARTMENT.

THE APPLICANT AGREES NOT TO OPERATE THE DISPENSARY UNTIL THE DISPENSARY IS INSPECTED AND THE APPLICANT OBTAINS

APPROVAL TO OPERATE FROM ADHS.

Will Humble, Director